



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA – 2014-0090]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America waivers.

SUMMARY: This Notice provides NHTSA's finding with respect to five requests from the Michigan Office of Highway Safety Planning (OHSP) to waive the requirements of Buy America. NHTSA finds that a non-availability waiver of the Buy America requirements is appropriate for the purchase of a portable data projector and a wireless remote control presenter, digital video discs (DVDs) and twenty high-visibility motorcyclist vests using Federal highway safety grant funds because there are no suitable products produced in the United States. In addition, NHTSA finds that a cost waiver is appropriate for OHSP to purchase twenty foreign-made training motorcycles using Federal grant funds because the cost of domestically produced products is twenty-five percent more than the cost of the foreign-made products. However, NHTSA finds that a non-availability waiver of the Buy America requirements is inappropriate for the lease of a copy/prINTER/fax machine.

DATES: The effective date of this waiver is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments may be submitted using any one of the following methods:

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- **Fax:** Written comments may be faxed to (202) 493-2251.
- **Internet:** To submit comments electronically, go to the Federal regulations website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202-366-9324.

FOR FURTHER INFORMATION CONTACT:

For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202-366-0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263). You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

This Notice provides NHTSA's finding that a waiver of the Buy America requirements, 23 U.S.C. 313, is appropriate for the Michigan Office of Highway Safety Planning (OHSP) to purchase a portable data projector, a wireless remote control presenter, DVDs, high-visibility

motorcycle vests and twenty training motorcycles using grant funds authorized under 23 U.S.C. 402 (section 402) and 23 U.S.C. 405(g) (section 405) for training motorcycles. This Notice also provides NHTSA's finding that a Buy America waiver is inappropriate for the purchase of a copy/prINTER/fax machine.

Section 402 funds are available for use by State Highway Safety Programs to reduce traffic accidents and deaths, injuries and property damage. 23 U.S.C. 402(a). Section 405(g) funds are available for use by State Highway Safety Programs to implement effective programs to reduce the number of single and multi-vehicle crashes involving motorcyclists that, among other things, includes supporting resources and training of motorcyclists. Buy America provides that NHTSA "shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States." 23 U.S.C. 313. However, NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent. 23 U.S.C. 313(b). In this instance, NHTSA has determined that non-availability waivers are appropriate for the purchase of a portable data projector, a wireless remote control presenter, DVDs and twenty high-visibility motorcycle vests because there are no sufficient products produced domestically that meet the needs identified by OHSP. The agency also finds that a cost waiver is appropriate for the twenty training motorcycles because domestically produced motorcycles would increase the cost by more than 25 percent. A waiver is not appropriate for the lease of a copy/prINTER/fax

machine since OHSP did not show that no multi-function printers are made domestically or provide cost information to show that purchasing domestically produced multi-function printers would increase the cost by more than 25 percent.

OHSP seeks waivers 1) to purchase an Epson EX series projector and a Kensington wireless remote control presenter for use in its traffic crash report trainings and presentations; 2) to lease a Ricoh MP 5001 Aficio copy/printer/fax machine for use by its staff; 3) to purchase 5,000 DVDs for distribution of media messages related to highway safety; 4) to purchase twenty high-visibility motorcyclist vests from a combination of manufacturers: Fly Racing, Icon and Joe Rocket; and 5) to purchase twenty 2015 Suzuki TU250X motorcycles. We first address the office products and then address the motorcycles.

OHSP aims to use the office products in its highway safety programs throughout the state of Michigan and the high-visibility motorcycle vests for motorcycle training. However, OHSP is unable to identify any portable data projectors, wireless remote control presenters, DVDs or high-visibility motorcyclist vests that meet the Buy America requirements. The Michigan State Police's Criminal Justice Information Center evaluated the location of manufacturing for the projectors and remote control presenters. Despite this assessment, Michigan was unable to find any American made products. Michigan also researched the manufacturers of blank DVDs and determined that there are no domestic DVD manufacturers and at least three manufacturers produce DVDs overseas: CMC (Taiwan and China), MBI (India) and Ritek (Taiwan). OHSP's investigation of domestic motorcyclist vest manufacturers consisted of phone calls and emails to manufacturers and suppliers, Internet searches and, specifically, included an inquiry with the largest on-line supplier of motorcyclist riding gear in the United States, which reported it was unaware of such vests manufactured domestically. NHTSA conducted similar assessments and

is not aware of any such portable data projectors, wireless remote control presenters, blank DVDs or high-visibility motorcyclist vests produced in the United States. Since these items are unavailable from a domestic manufacturer, the Buy America waivers are appropriate. NHTSA invites public comment on this conclusion.

OHSP also seeks a waiver to purchase twenty 2015 Suzuki TU250X motorcycles for its motorcyclists training program. The starting price for a Suzuki TU250X is \$4169. OHSP wishes to use these motorcycles for its motorcyclist training program because they are designed specifically with smaller engine displacement (250 CC), less unladen weight, and smaller seat height. Michigan is unable to identify any training motorcycles that meet the Buy America requirements. OHSP researched motorcycle models made by the two American motorcycle manufacturers, Harley Davidson, Inc. and Victory Motorcycles. Harley Davidson plans to produce a 500 CC motorcycle called the Street 500, with an estimated MSRP between \$6,700 and \$7500. Victory Motorcycles (including Indian Motorcycles) produces much heavier and larger engine displacement than 500 CC, with the lowest MSRP of \$12,499. OHSP was unable to find a motorcycle that meets the requirements for training motorcycles that would meet the Buy America requirements. NHTSA is not aware of any training motorcycles currently produced in the United States, with Harley Davidson's Street set to start production sometime this year. Since the Harley Davidson Street has an estimated \$6,700 to \$7500 MSRP, it is more than 25 percent higher than the cost of a Suzuki TU250X and, since no other domestic manufacturer produces a motorcycle engine displacement of 500 CC or less, a Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

Although OHSP seeks a waiver to lease a Ricoh MP 5001 Aficio copy/printer/fax machine for use by its staff, NHTSA has determined this waiver is inappropriate. OHSP

provided no evidence that similar items are not produced domestically. OHSP merely states that it cannot comply with the requirements of Buy America because Michigan's State approved contractor does not offer any other brand for OHSP to purchase and that the State is unable to deviate from its existing contracts to make provisions for Buy America. In addition, it failed to provide any showing that it made efforts to find an American made machine that complies with the Buy America requirements. NHTSA has found no basis under Buy America to grant a non-availability waiver for leasing a Ricoh copy/printer/fax machine. If the State of Michigan requires OHSP to lease a Ricoh MP 5001 Aficio copy/printer/fax machine pursuant to its State procurement regulations, nothing in Buy America or NHTSA's grantee requirements prohibits OHSP from using state funds to acquire this item.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to OHSP in order to purchase a Epson EX series projector and a Kensington wireless remote control presenter, DVDs, twenty high-visibility motorcyclist vests and twenty Suzuki TU250X motorcycles. These waivers apply to Michigan and all other States seeking to use section 402 and 405 funds to purchase these items for the purposes mentioned herein. These waivers will continue through fiscal year 2015 and will allow the purchase of these items as required for Michigan's Highway Safety Office and its training programs. Accordingly, this waiver will expire at the conclusion of fiscal year 2015 (September 30, 2015). NHTSA also determines that it is inappropriate to grant a waiver from the Buy America requirements to OHSP for the lease of a Ricoh MP 5001 Aficio copy/printer/fax machine. In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), NHTSA is providing this notice as its

finding that a waiver of the Buy America requirements is appropriate for the portable data projector and wireless remote control presenter, but not the copy/printer/fax machine. Written comments on this finding may be submitted through any of the methods discussed above.

Authority: 23 U.S.C. 313; Pub. L. 110-161.

Issued in Washington, DC on September 9, 2014

under authority delegated in 49 CFR part 1.95

O. Kevin Vincent
Chief Counsel

Billing Code: 4910-59-P

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